

Chapter 1. OVERVIEW

1.1 Statement of Purpose and Principles

The District of Columbia Sentencing Commission (“the Commission”) was charged with developing a comprehensive structured sentencing system for D.C. or explaining why no such system was needed.

In examining the existing system, the Commission discerned disparity in sentencing, some of which could be explained by legitimate sentencing factors relating to the nature of the crime or the background of the offender, but some of which was apparently attributable to differences in judicial philosophy. Both truth in sentencing and basic fairness require that similarly situated offenders should receive similar sentences for committing the same crime in essentially the same way and that offenders receive different sentences where either the nature of the offense or the history of the offender is different. The Commission thus concluded that the District could benefit from a comprehensive structured sentencing system, and the Commission embarked upon the difficult task of creating workable sentencing guidelines.

Following the lead of other jurisdictions and an earlier effort in the District, the Commission developed a grid to plot two of the dominant factors in sentencing: the offense of conviction (on the vertical axis) and the criminal history of the offender (on the horizontal axis). At the intersection of these two factors on the grid, each box contains the sentencing options and prison ranges for that particular combination of the crime of conviction and criminal history of the offender. The Master Grid has 45 boxes and the Drug Grid has 15 boxes. There is considerable overlap between adjoining boxes, both horizontally and vertically; but, in general, as the seriousness of the offense and the criminal history of the offender increase, the length of the prison sentences increase and the alternatives to incarceration decrease.

In creating these boxes, the Commission did not attempt to create prison ranges and sentencing options based upon what the Commission as a whole thought might be appropriate for that combination of offense of conviction and criminal history of the offender (a normative method). Instead, the options and ranges in each box were based on historical data from the Superior Court Criminal Information System computer over the past eight years, with some adjustment for consistency and symmetry. See Appendices A, B, E and F. The Commission took the historical approach because it was not the intent of the Commission overall to either lengthen or shorten average sentences. The Commission’s goal was to create a sentencing system that would reduce disparity and increase the likelihood that similarly situated offenders would be treated similarly. In developing the grid, the Commission attempted to move sentences toward the historical center, without shifting that center either up or down. Although the prison ranges are relatively broad, they nevertheless limit discretion to approximately the middle 50 percent of historical prison sentences.¹ The guidelines also permit a sentence of probation if, historically, at least 25 percent of cases in a given box resulted in probation. Similarly, a short split sentence (X months, ESS all but 6 months (or less but not all) followed by probation) is permissible if, historically, at least 25 percent of the cases in a given box resulted in either probation or a short split. Although the guidelines permit probation or a short split under these circumstances, such a sentence is not required.

¹For old law (indeterminate) cases, the Commission used the minimum prison sentence that was imposed (e.g., ten years if the sentence was 10-30 years). For new law (determinate) cases, the Commission used the prison sentence that was imposed.

The Commission also established standards for departing from the recommended prison ranges in extraordinary cases, rules for imposing concurrent or consecutive sentences, and adjustments and exceptions to sentencing “in the box.” Together, the grids, standards, rules, adjustments and exceptions form the Sentencing Guidelines for the District of Columbia. Any sentence that is meted out in conformity with these Guidelines is a “guideline compliant” sentence. Any sentence that does not, is not a “guideline compliant” sentence.

The guidelines should give judges, practitioners, defendants, crime victims, and the community at large a better understanding of the likely consequences of criminal behavior and greater confidence that sentences will be predictable and consistent. Although the guidelines are voluntary, the Commission expects a high degree of compliance. Nevertheless, judges are free to impose any lawful sentence they choose. **Sentences under the guidelines, just like sentences before the guidelines, are not appealable except when they are unlawful.** In order to assist the Commission in evaluating the guidelines, judges will be required to acknowledge that they have followed the guidelines, to provide the departure principle(s) upon which they relied to sentence “outside the box,” or to state why they did not use the guidelines.²

In the end, sentences in the District of Columbia are supposed to:

- (1) Reflect the seriousness of the offense and the criminal history of the offender;
- (2) Provide for just punishment and afford adequate deterrence to potential criminal conduct of the offender and others; and
- (3) Provide the offender with needed educational or vocational training, medical care, and other correctional treatment.

D.C. Code § 24-403.01(a). The Commission hopes that the process of developing and implementing voluntary guidelines for the District of Columbia will contribute to these goals.

For further information on the development of the guidelines, see the 2003 Report, which can be found at <http://acs.dc.gov>.

1.2 Key Features of the Sentencing Guidelines

The key features of the Sentencing Guidelines are:

1.2.1 *Voluntary Guidelines*

These guidelines are voluntary. This means that judges are not required to follow them. It also means that a lawful sentence cannot be appealed whether or not the judge complies with the guidelines or the procedures recommended in these instructions.

In order to eliminate unwarranted disparities in sentencing, the Commission hopes for and expects a high degree of compliance. We will have the opportunity during the next two and a half years -- and thereafter -- to make adjustments if necessary. The Commission welcomes comments and suggestions.

² Throughout these instructions, we use the words such as “must” and “are required to.” These should be read to mean, “if a judge wants to impose a guidelines compliant sentence, he or she ‘must’ or ‘is required to,’ etc.” If a judge elects not to use the guidelines (which we hope he or she does not), such exhortations would have no meaning.

1.2.2 *Two Grids: the Master Grid and the Drug Grid*

Each grid contains groups of offenses, ranked by level of severity, along the vertical axis, Groups 1-9 on the Master Grid and Groups 1-3 on the Drug Grid. Both grids contain five groups of criminal history scores, along the horizontal axis, listed as Columns A-E. *See* § 7.5, Appendices A and B.

When the offense of conviction and the criminal history score are determined, the sentencing options for that conviction are found in the box where offense row and criminal history column intersect.

1.2.3 *Ranking of Offenses*

The Commission has ranked all felonies in the D.C. Code in groups by level of severity. Ranking was based principally on a sense of where the offense belonged (using typical, rather than atypical, examples of each offense) and historical sentencing practices. There are nine groups of offenses on the Master Grid (from First Degree Murder While Armed in Group 1 to Receiving Stolen Property in Group 9) and three groups on the Drug Grid (from distribution while armed in Group 1 to attempt distribution in Group 3). *See* Appendices C and D.

The Offense Severity Group is based on the offense of conviction, *see* § 7.20, and not upon the underlying conduct. There is no discretion to decide in which group to place the offense of conviction. The Commission has attempted to assign every felony in the D.C. Code to an Offense Severity Group. If you encounter a D.C. Code felony that has not been assigned to an Offense Severity Group, please inform the Commission and it will rank it appropriately.

1.2.4 *Criminal History Scores*

There are a series of rules for computing a criminal history score that depend primarily on (1) the number and severity of prior convictions and adjudications and (2) the length of time between the imposition or the expiration of the defendant's last sentence and the commission of the instant offense.

1.2.5 *Sentencing Options*

All boxes have a prison option. The numbers within the box indicate the range within which the prison sentence must fall, unless a departure principle applies. *See* Chapter 5, § 7.7. Note that the higher number in the box would change (expanding the range within the box) if a statutory enhancement applies.³ *See* Chapter 4, § 7.9.

Some boxes (dark gray) permit a short split sentence. A "short split" sentence is one where the time to be served initially is six months or less. A short split sentence is permissible in any box where, historically, at least 25% of the cases resulted in either a short split or probation. To impose a short split, the court must impose a prison sentence that falls within the prison range in that box, suspend execution of all but six months or less of that sentence -- but not all of it -- and impose up to 5 years probation. A straight prison sentence also is permissible in these boxes.

Some boxes (light gray) permit a probation sentence. Probation is an option in any box where, historically, 25% or more of the cases resulted in a sentence to probation. To impose probation, the court must impose a prison sentence that falls within the prison range in that box, suspend

³ A statutory enhancement applies only where the government has followed appropriate procedures for notifying the defense (indicting the enhancement; filing papers) and the enhancement is proven.

execution of all of it [ESS all] and impose up to 5 years probation. A short split, described in the previous paragraph, or a straight prison sentence also is permissible in these boxes. *See* § 3.7.

The remaining boxes (white or unshaded) permit only a prison sentence, unless a departure principle applies. *See* Chapter 5.

1.2.6 *Statutory Enhancements*

The system accommodates statutory enhancements by raising the higher number in the box by the same percentage or ratio as the statutory maximum is increased. *See* Chapter 4.

1.2.7 *Departure Principles*

There are non-exclusive lists of aggravating and mitigating factors that permit the court to sentence outside of the box. If the court finds one of the enumerated factors to be substantial and compelling in a given case, the court is not bound by the grid options and ranges. Similarly, if the court finds another substantial and compelling reason, comparable in gravity to the enumerated factors, that aggravates/mitigates substantially the seriousness of the offense or the defendant's culpability, the court is not bound by the grid options and ranges. There are no limitations on the sentence the court can impose if it finds a substantial and compelling reason to depart.⁴ Any legal sentence may be imposed. *See* Chapter 5.

1.2.8 *Rules for Consecutive and Concurrent Sentences*

There are rules for imposing consecutive or concurrent sentences in some cases. Judicial discretion applies in other cases. *See* Chapter 6. *See* also § 5.2.4.

1.2.9 *Exceptions*

- (a) Rule 11(e)(1)(c) pleas control the sentence or sentencing range regardless of the otherwise applicable grid options or prison range.
- (b) Every offense with a mandatory minimum is found in a box whose prison range contains that mandatory minimum. The guidelines do not change the mandatory minimums and the court has no discretion to sentence below the mandatory minimum.

1.3 *Effective Date*

The Sentencing Guidelines apply to all felony cases and are scheduled to go into effect for verdicts and pleas that are entered on and after June 14, 2004.

1.4 *Pilot project*

The sentencing guidelines are being implemented initially as a pilot project. The purpose for introducing the guidelines as a pilot project is to give the Commission the opportunity to assess implementation, discover where the problems lie, and make such adjustments as may be necessary based on experience rather than prediction. While all sentencing guideline systems are continuously being updated and refined, there should be greater flexibility during this pilot project to revise the

⁴ The only exceptions to this rule are Aggravating Factor #10 and Mitigating Factor #11, which allow the judge to depart if the application of the rules for consecutive or concurrent sentencing result in a sentence that is too lenient or too harsh respectively. The limitations are explained in Chapter 5.

basic design than we would anticipate when a more permanent system is adopted in the future.

Note: The sentencing guidelines apply to ALL felonies being sentenced before ALL judges during this pilot project.

1.5 Continuing Role of the Commission

1.5.1 *Monitoring and Refining the Guidelines*

The Commission will be monitoring the implementation of the guidelines, collecting data and making recommendations on adjustments that should be made both during the pilot project and thereafter. Two issues that the Commission will be examining are whether the options and ranges need to be adjusted and whether the offenses are ranked properly, especially for offenses that can be committed in very different ways.

The Commission welcomes comments and suggestions from the legal community and the community at large on the guidelines as a whole or on specific aspects of them.

1.5.2 *Research*

The Commission intends to undertake research to assist its future decision-making processes.

1.5.3 *Automating the Guideline Calculation Process*

The Commission is contracting with an outside vendor to establish a web-based system that will automatically calculate the appropriate sentencing options for each conviction and each case. The system will also capture sentencing data that can be used in monitoring and refining the guidelines.